

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**Rutherford Grove Winery
1673 St. Helena Highway
Rutherford, Napa County, CA**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Water Board), finds with respect to Rutherford Grove Winery (hereinafter called the Discharger), that:

1. The Discharger operates the facility, which discharges storm water associated with industrial activity. In 1998, the Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order NO. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Discharger's Waste Discharge ID No. is 2 28I014513.
2. The General Permit states, in part:

“Section B. Monitoring Program and Reporting Requirements

“14. All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).”
3. The Discharger violated Section B of the General Permit by failing to submit its 2006/2007 annual report by July 1, 2007.
4. On August 6, 2007, the Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 8, 2007, but failed to do so.
5. By certified mail dated November 13, 2007, the Executive Officer issued a second NNC letter to the Discharger. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions, including administrative civil liability of up to \$10,000 per day,

if an annual report was not submitted. No written or verbal response to the letter was provided by the Discharger.

Board staff discussed the matter with the Discharger via telephone on April 30, 2008.

6. On May 1, 2008, the Discharger submitted to the Water Board's office the 2006-2007 annual report, 304 days past the July 1, 2007, deadline.

7. California Water Code (CWC) Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(2) Any waste discharge requirements or dredge and fill material permit.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.”

(2) [subsection 2 is not pertinent to this ACL]

8. CWC Section 13385 authorizes Administrative Civil Liability not exceeding \$10,000 for each day in which the violation occurs. The 2006/2007 annual report was submitted on April 30, 2008, 304 days past the July 1, 2007 deadline.

9. On July 11, 2008, the Assistant Executive Officer issued a Complaint (R2-2008-0050) to the Discharger proposing an \$11,100 Administrative Civil Liability for the violation of the General Permit, and CWC Section 13385. The Discharger has not contested the Complaint's allegations.

10. The Water Board, after hearing all testimony, determined the Discharger is subject to civil penalties. In determining the amount of civil liability the following factors have been taken into consideration:

“...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters of justice may require.”

11. The Board determined, with respect to the factors required in the Findings, the following:

a. Nature, circumstances, extent, and gravity of the violation

Late submittal of the annual report is a significant violation because the Water Board relies on the report to determine the Discharger's compliance with the General Permit.

The Discharger was given a number of warnings, including two Notices of Noncompliance and was contacted once by telephone. These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at its site.

b. Susceptibility to cleanup, violator's voluntary cleanup efforts, and toxicity of the discharge

Cleanup is not applicable to failure to submit the annual report. Toxicity of discharge cannot be addressed.

c. Prior history of violations

The discharger has submitted its annual reports from previous years in a timely manner.

d. Degree of culpability

The storm water regulations are applicable to all industrial sites on a nationwide basis. All dischargers are required to comply with the General Permit. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

e. Savings resulting from the violation

The Discharger has realized cost savings by: failure to perform required sampling and analyses, failure to prepare the annual report, and failure to implement and/or document its SWPPP. Assuming an average-sized site, the minimum economic savings for not submitting an annual report is approximately \$1000/year.

f. Discharger's ability to pay

The Discharger has not demonstrated an inability to pay the proposed amount.

g. Other matters that justice may require

Staff time to prepare a Complaint and supporting information is estimated to be 20 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$2,500.

12. An \$11,100 Administrative Civil Liability is appropriate based on the determinations in these Findings. This includes staff costs of \$2,500.

13. The Discharger has proposed, in its August 7, 2008, letter to Board staff, to complete a Supplemental Environmental Project (SEP). Board staff subsequently received an SEP proposal, dated August 13, 2008, from the Friends of Napa River on behalf of

the Discharger for funding an environmental education program within the Napa River Watershed. The SEP will provide \$5,550 to the Friends of the Napa River for its In-School Watershed Education Program. The Discharger has separately remitted payment of \$5,500 toward the proposed ACL amount.

14. The Executive Officer finds that the payment of \$5,500 along with the timely completion of the proposed SEP by August 1, 2009, will satisfy the proposed administrative civil liability.
15. This action is an Order to enforce the laws and regulations administered by the Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a) (2), Title 14, of the California Code of Regulations.
16. The Discharger may petition the State Board to review this action. The State Board must receive the petition within 30 days of the date this order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that:

- a. The Discharger is civilly liable for the violation of the General Permit cited in Complaint No. R2-2008-0050 in the amount of \$11,100 and shall pay this liability by completing the SEP as proposed in its August 7, 2008, letter to Board staff and SEP proposal, dated August 13, 2008, from the Friends of Napa River on behalf of the Discharger and described herein, and through its already-remitted payment of \$5,500 to the State Water Pollution Cleanup and Abatement Account for the remaining amount;
- b. The Discharger shall complete its SEP, as proposed in its August 7, 2008, letter and SEP proposal, dated August 13, 2008, from the Friends of Napa River on behalf of the Discharger not later than August 1, 2009. The Discharger shall submit a report, acceptable to the Executive Officer, not later than sixty days after completion of the SEP, and in any case not later than August 1, 2009, documenting that the SEP was fully implemented as proposed, including the information necessary to support that documentation demonstrating that the SEP met the goals of:
 - Providing 75 presentations about watershed science including: the water cycle, watershed and river ecology, with a focus on local creeks and the Napa River to 650 students, grades 3-5, at seven schools within the Napa River watershed: comprised of Yountville Elementary, Salvador, Bel Aire, Northwood, West Park, Snow, and Pueblo Vista;

- Developing materials and implement a pilot program for 2nd graders at Yountville Elementary;
 - Purchasing replacement vials, magnifying glasses, and a case for transporting benthic macro-invertebrate samples for classroom examination;
 - Making laminated copies of classroom education materials; and,
 - Printing an informational brochure about the program.
- c. The Discharger's remaining unpaid liability in the amount of \$5,500 is suspended contingent upon full and timely implementation of the proposed SEP by not later than August 1, 2009. The remaining unpaid liability will become immediately due and payable if the SEP is not fully implemented by that date.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the Executive Officer on November ____, 2008.

Bruce H. Wolfe
Executive Officer